




v. Harp, 406 F.3d 242 (2005), in which the Fourth Circuit held that the maximum aggravated sentence that could be imposed upon a defendant with the worst possible criminal history is used to determine whether a conviction is for a crime punishable by a prison term exceeding one year under North Carolina law), vacated & reh'g granted, No. 08-4475 (4th Cir. Mar. 18, 2011).

After defendant entered his guilty plea, the Fourth Circuit vacated the panel decision in Simmons and granted rehearing en banc. Simmons, No. 08-4475 (4th Cir. Mar. 18, 2011). On August 17, 2011, the Fourth Circuit issued an en banc decision overruling Harp. United States v. Simmons, No. 08-4475, slip. op. at 15-17 (4th Cir. Aug. 17, 2011).

To assist the court in its decisional process, the court hereby directs the government to inform the court, on or before August 31, 2011, of its position as to the impact on this case of the Fourth Circuit's recent en banc decision in Simmons. Defendant may provide a written response to the government's filing on or before September 7, 2011.

This 24th day of August 2011.

  
MALCOLM J. HOWARD  
Senior United States District Judge

At Greenville, NC  
#31